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Letter dated 28 February 2017 from the Permanent Representative of Poland to the United Nations addressed to the Chair of the Committee

On behalf of the Government of the Republic of Poland, I have the honour to submit relevant information on measures undertaken by Poland to implement the provisions of Security Council resolution 2321 (2016), in accordance with paragraph 36 of that resolution (see annex).

I would also like to emphasize that the Government of Poland remains at the disposal of the Security Council for any matters that may require further clarification.

(*Signed*) Boguslaw **Winid**
Ambassador
Permanent Representative

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Annex to the letter dated 28 February 2017 from the Permanent Representative of Poland to the United Nations addressed to the Chair of the Committee

Report of Poland on the implementation of Security Council resolution 2321 (2016)

On 30 November 2016, the Security Council adopted resolution 2321 (2016), in which the Council, expressing its gravest concern at the nuclear test conducted by the Democratic People's Republic of Korea on 9 September 2016 in violation of the relevant Security Council resolutions, condemned the ongoing nuclear and ballistic missile activities of the Democratic People's Republic of Korea.

In August 2016, Poland decided to issue a public statement underlining that nuclear tests constituted a violation of international obligations and were a threat to peace and security, and encouraging the Democratic People's Republic of Korea to return to the dialogue, including with the International Atomic Energy Agency (IAEA), and to allow its nuclear programme to undergo international checks.

Poland unequivocally voiced its support for new additional measures and co-sponsored Security Council resolution 2321 (2016), which further expanded economic sanctions already imposed on the Democratic People's Republic of Korea.

The system of sanctions imposed by the Security Council is implemented by the European Union in a uniform manner by adopting relevant legislation such as a decision or regulation issued on the basis of article 29 of the Treaty on European Union and article 215 of the Treaty on the Functioning of the European Union, respectively. It should be emphasized that these measures constitute an essential part of the European Union foreign policy tool that it uses to pursue objectives in accordance with the principles of the Common Foreign and Security Policy. It should be noted that, from a legal perspective, a regulation has a direct binding effect on all persons and entities, without a requirement that it be incorporated into national legislation, unless stipulated otherwise. Implementation at the national level is generally applicable to precise provisions, in which Member States are explicitly given latitude to cover a specific issue at the national level.

Poland, as a member of the European Union, implements provisions of a Security Council resolution by applying at the national level relevant European Union legislation. It should be underlined that the European Union regards activities of the Democratic People's Republic of Korea as a significant threat to global security. Therefore, restrictive measures against that country have been adopted for the past decade, with Council Regulation (EC) No. 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea amended correspondingly in line with Security Council resolutions.

Considering that the actions of the Democratic People's Republic of Korea constitute a grave threat to international peace and security in the region and beyond, the European Union decided to further expand its restrictive measures targeting the nuclear, weapons of mass destruction and ballistic missile programmes of the Democratic People's Republic of Korea. The comprehensive legislative package establishing stringent measures at the European level in order to enshrine

legal steps undertaken by the Security Council in its resolution 2321 (2016) was adopted by the European Union accordingly in Council Decision (CFSP) 2017/345 of 27 February 2017 amending Council Decision 2016/849/CFSP concerning restrictive measures against the Democratic People's Republic of Korea and Council Regulation 330/2017 amending Council Regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea.

These additional measures, set forth in the above-mentioned legislation, include the measures set out below.

Trade and transport sector

In the trade and transport sector, such measures include:

- Limits on coal that may be imported from the Democratic People's Republic of Korea, along with an established mechanism of monitoring and verification
- Export bans on copper, nickel, silver, zinc, statues, helicopters and vessels
- Enhanced inspection of cargo within or transiting through the territory of European Union member States, including cargo being transported by rail and by road
- Subjection of personal luggage and baggage of individuals to controls in the same manner as cargo in order to prevent bulk cash smuggling.

In line with national statutory requirements, the Customs Service and the Border Guard may undertake checks based on the principles and procedures set forth for customs control or border control. The principal roles of the Customs Service include exercising customs control on commercial international exchange, fighting against smuggling activity and combating customs fraud. In order to discharge the above-described roles and responsibilities, the Customs Service cooperates with other services in the country such as the police, the Border Guard and the General Customs Inspectorate. Considering the stringent sanctions regime against the Democratic People's Republic of Korea that has already been in place, enhanced scrutiny and checks have been carried out by the Customs Service and the Border Guard on a regular basis. It should be noted that, with respect to the prohibition of transfer or export of certain goods, such as gold and other precious metals, penalties for non-compliance with European Union rules imposing a ban on such imports and exports, as well as the provision of services, are set forth in the Act of 10 September 1999 — Fiscal Penal Code (*Official Journal of Laws* (2013), item 186).

A system of penalties for the infringement of rules has been envisaged in chapter 7, which enumerates fiscal offences and fiscal misdemeanours with regard to customs duties and rules of foreign trade in goods and services. Given these rules, penalization covers, inter alia, customs smuggling and customs fraud. Numerous penalties range from a fine of up to 720 daily rates[1] to imprisonment or joint penalties. In less serious cases, a perpetrator is subject to a fine imposed for misdemeanours.

[1] The daily rate is calculated by the court, which takes into account the income of the perpetrator, as well as his or her personal and family circumstances, property and earning capacity.

As far as potential cash smuggling is concerned, it should be underscored that there is also a relevant customs declaration system in place. Cash carried by any natural person entering or leaving the European Union is subject to the principle of obligatory declaration. In accordance with article 3 of regulation No. 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community, there is a general obligation to declare cash of a value of €10,000 or more. Pursuant to national legislation, declaration requirements also encompass foreign exchange, gold or platinum. In accordance with article 18 of the Act on Foreign Exchange Law (*Official Journal of Laws* (2013), item 1036), residents and non-residents crossing the State border are obliged to report in writing, to the Customs Service or the Border Guard, imports into the country and exports abroad, foreign exchange, gold or platinum, regardless of the amount, as well as currency, if its value exceeds the equivalent of €10,000. In order to determine if imports into the country of foreign exchange, gold or platinum are in accordance with the provisions of the Act, the Customs Service and the Border Guard may undertake checks in line with the principles and procedures set forth in the regulations on customs control or border control. Under article 106f of the Fiscal Penal Code, non-compliance with the declaration requirement is categorized as a fiscal misdemeanour and is penalized by a fine.

Financial sector

In the financial sector, measures taken include:

- Prohibition on the provision of public or private financial support for trade with the Democratic People's Republic of Korea, including the granting of export credits, guarantees or insurance to their nationals or entities involved in such trade
- Closure, within 90 days of the adoption of Security Council resolution 2321 (2016), of existing representative offices, subsidiaries or banking accounts in the Democratic People's Republic of Korea
- Limits on banking services such as prohibition of the opening by credit and financial institutions of a bank account for diplomatic missions or consular posts of the Democratic People's Republic of Korea, and their members from that country, and authorization for only one account in the member State or member States in which the mission or post is hosted or to which its members are accredited.

It is worth noting that all addressees of the European provisions are required by virtue of law to apply the aforementioned provisions. It should be emphasized that all financial institutions are subject to supervision and monitoring, in the light of the binding sanctions regime. Apart from the statutory task of the financial intelligence unit to monitor compliance with the requirements under the anti-money laundering/combating the financing of terrorism act, it is stated in article 21, paragraph 3, that compliance monitoring of financial institutions may also be carried out by the Polish Financial Supervision Authority, within the legislative framework setting out the powers and functions of such authority. The supervisory powers, functions and responsibilities of the Polish Financial Supervision Authority is governed by the Act on Financial Market Supervision of 21 July 2006 (*Official Journal of Laws* (2016), item 174). The Polish Financial Supervision Authority is a body established to supervise the financial market in order to ensure its proper

functioning, security, stability and market confidence, as well as to ensure the safety of participants in the market.

In relation to specific financial institutions, supervisory power is executed in line with rules provided for in separate statutes. As far as banks are concerned, relevant instruments are listed under chapter 11 of the Banking Act; provisions pertinent to insurance are found under chapter 12 of the Act on Insurance Activity; with respect to securities, the relevant provisions are set out under the Act on Capital Market Supervision; and with respect to payment services, the relevant provisions are found under the Act on Payment Services.

Referring to the issues related to ceasing financial relationships with entities from the Democratic People's Republic of Korea, it should be noted that currently no entities from that country are present on the Polish financial market, including in the form of subsidiaries, branches or representative offices, nor are any entities linked to such undertakings. Furthermore, the Polish Financial Supervision Authority has not issued permits to conduct business activity by Polish banks on the territory of the Democratic People's Republic of Korea in the form of a subsidiary bank, branch or representative office.

It should also be mentioned that the Democratic People's Republic of Korea is called a high-risk and non-cooperative jurisdiction by the Financial Action Task Force. Statements of the Task Force are implemented by financial sector entities in their internal procedures, and it is mandatory to take enhanced measures against entities from these countries. Preventive measures undertaken by financial market entities are subject to verification during inspections, both in reviewing and verifying the customer base and analysing and verifying a set of documents pertinent to a particular customer.

There are various other measures provided, such as vigilance and prevention of the provision of specialized teaching or training of nationals of the Democratic People's Republic of Korea, the suspension of scientific and technical cooperation, and a travel ban applicable to persons covered by Security Council resolution 2321 (2016).

In addition, there is a prohibition on leasing or otherwise making available real property, directly or indirectly, to persons, entities or bodies of the Government of the Democratic People's Republic of Korea, for any purpose other than diplomatic or consular activities, or engaging in any activity linked to the use of real property. These provisions are enshrined in relevant provisions of the aforementioned European Union decisions and regulations. In February 2017, Poland submitted a written diplomatic note to diplomatic representatives of the Democratic People's Republic of Korea, underlining legal obligations arising from international norms to cease any activity that might be in breach of both Security Council resolution 2321 (2016) and European Union legislation, in particular with regard to diplomatic premises.

The existing European Union measures implement all Security Council resolutions adopted after the Democratic People's Republic of Korea's nuclear tests and launches using ballistic missile technology and already include additional autonomous measures. Prohibitions on the export and import of arms, goods and technology that could contribute to nuclear, weapons of mass destruction and ballistic missile programmes, and other restrictions in the financial, trade and

transport sectors, have already been put into place. Poland has also actively joined the European Union in efforts to create and adopt its own autonomous set of sanctions, complementing and reinforcing the sanctions regime imposed by the Security Council. Various legal mechanisms, referred to as autonomous measures, are subject to thorough consideration at the European Union level in order to reflect the United Nations mechanism, in line with the principles of the European Union treaties.

Taking into consideration the aforementioned, we firmly believe that Poland acts fully in line with international obligations. However, it should be underscored that Polish authorities analyse any possible additional steps that may be undertaken at the national level to enhance measures imposed against the Democratic People's Republic of Korea.